

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5121 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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AMINABEN WIFE OF MOHMED VALI NOOR MANSURI

Versus

STATE OF GUJARAT

Appearance:

MR YN RAVANI for Petitioner
MR. NIGAM SHUKLA, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 19th April, 1996, passed against the petitioner by the District Magistrate, Bharuch, detaining her under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985.

The detention order was executed on the same day, i.e. on 19th April, 1996, and since then the petitioner is under detention lodged in Sabarmati Central Jail, Ahmedabad.

2. The present Special Civil Application was filed in this Court on 15th July, 1996 and on 16th July, 1996, Rule returnable for 12th August was issued. So far no reply has been filed on behalf of the respondents nor any affidavit in reply has been filed on by the detaining authority.

3. The grounds of detention enclosed with the detention order show that six criminal cases under the Prohibition Act with regard to the possession and sale of country liquor were registered against the petitioner during the period 1993-96 and the petitioner was bailed out in all the six matters. After noticing the allegations of those criminal cases, the detaining authority has referred to the statements of four witnesses made on 20th March, 1996 and 27th March, 1996, wherein the witnesses have stated that the petitioner was engaged in the unauthorised business of manufacturing and sale of country liquor, having ill-effect on the public at large; she was maintaining a gang of head strong persons and also extorting money from the pockets of the witnesses; and being frightened and afraid of the petitioner, the victims were not in a position to make report against the petitioner. It is also stated that the petitioner has been pressurising the witnesses to allow her to use their vehicles for the purpose of the business of liquor; the petitioner is a bootlegger and she is engaged in anti-social activites and is a danger to the public order. The detaining authority has also mentioned that the proceedings of externment may not be expedient in the facts of this case and it was necessary to detain the petitioner so as to prevent her from continuing with these anti-social activities and the activities of bootlegging are injurious to public health.

4. The detention order has been challenged on more than one grounds, but the learned counsel for the petitioner has laid stress on the submission that, even if the allegations levelled against the petitioner are taken to be true, they do not constitute a case of breach of public order and at the most, it can be said be a case of breach of law and order. Recently, in a decision rendered by this Court on 4th October, 1996 in Special Civil Application No.3879 of 1996 and in Special Civil Application No.3623 of 1996, decided on 5th October, 1996, a considered view has been taken

after noticing several decisions of the Supreme Court and this Court that, such allegations and materials do not constitute a case of breach of public order so as to justify the passing of a detention order under the PASA Act. At the most, it can be said to be a case of breach of law and order, on the basis of which the detention order cannot be passed. It has been held and a considered view has been taken that cases of breach of law and order will stand on an entirely different footing than that of breach of public order and in the eye of law, grounds of breach of law and order are not at all germane to consider the passing of detention order under the PASA Act. The decision dated 4th October, 1996, referred to hereinabove fully covers the present case, so as to hold the detention to be illegal.

5. Accordingly, this Special Civil Application is allowed. The impugned detention order dated 19th April, 1996 passed by the District Magistrate, Bharuch, against the petitioner s hereby quashed and set aside and the petitioner's continued detention is declared to be illegal. Respondents are directed to release the petitioner and set her at liberty forthwith, if not required in any other case. Rule lis made absolute.

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